

Legal Questions from Citizens' Committee to Study the Flower Fields and Strawberry Fields Area

C.C.U.P.P.

Save the Strawberry and Flower Fields

Gary Hill

1. 2.4: Since this paragraph openly recognized that these lands could be developed for a number of uses but legislates only an agriculture use, does this set the stage for a taking of private property rights claim?
2. 3.12 (B.2): Would this become a legal obligation for the City to establish special programs to ensure agricultural production? If so, what might the limits of these programs be?
3. 3.13 (C.4, C.7): Please define the term “practicable” as it is used in these paragraphs. What are the obligations created by these paragraphs? Are there limitations to these obligations?
4. 3.14: Does changing land use from Travel/Recreation Commercial Use to Open Space against the wishes of the land owner create a taking of private property rights? This paragraph refers to (APN's) in Sections 3.6 and 3.11 of this initiative but none are found in those sections. Does this have legal significance?
5. 5.1: Please identify what “substantial evidence on the record” refers to in this paragraph. What does “frustrate City functions” mean and how would we recognize it if it occurred?
6. 5.1 (b): Does this paragraph legally prevent a taking of private property rights? Does changing land use from Open Space with all of its currently allowed uses to one allowing only agricultural uses constitute a taking?
7. 5.1 (c): Does the Carlsbad Ranch Specific Plan fall under a vested right?

City

Gary Hill

1. 2.3 (6), 3.4, 4.1: Does the prohibition of industrial and commercial land uses on the SDG&E property constitute a taking of private property rights?
2. 4.2: Does the limitation of permitted uses in this paragraph constitute a taking?

General

Pat Kurth

1. Please clarify "Owners Rights" where each initiative is concerned. What happens to the zoning if the property is sold?

Keith Lewinger

2. For each of the initiatives, please outline the potential liability to the City (taxpayers) if a property owner within the subject area claims that passage of the initiative amounts to a "taking" of their property and a court ultimately agrees with them.
3. If more than one initiative receives a majority "yes" vote, what happens?

Chris Calkins

4. As conditions to the final map for the Carlsbad Ranch, the City required the installation of more than \$1 m of improvements solely related to the golf course use. The City also refused to consider alternate uses while the City Golf Course was in planning. Now the City or the Strawberry Initiative, without hearing, reports, or analysis proposes to strip from the private owner the land use for which the improvements were required. Does the City face any potential exposure for taking some vested property rights?
5. Does the statement of the City Mayor that the removal of Golf as a use on the private property was because the City had decided its own golf course was enough golf, without providing a comparable alternative use for the private owner, reflect a potential misuse of the City's police power in zoning and land use?

Peder Norby

6. Does the rezoning of the property by initiative, from the current zone of open space to the zoning of agriculture use, represent a devaluation and or more restrictive use? If so please advise on the exposure to potential litigation from the property owners and if that exposure is to the city or the prevailing initiative sponsor.
7. Same question but relating to the SDGE parcel:
Does the rezoning of one of the parcels by initiative, from the current zone of visitor serving and recreation zoning TR, to the zoning of agriculture use, or open space, represent a devaluation and or more restrictive use? If so please advise on the exposure to potential litigation from the property owners and if that exposure is to the city or the prevailing initiative sponsor.

8. Roque De La Fuente last year won a 120 million dollar judgment against the city of San Diego regarding the devaluation of his property because of city actions. The city offered to settle for 50 million, which was refused by Mr. De La Fuente, the city recently had a favorable court ruling limiting the damage somewhat which will be appealed. This legal battle looks to go on for some time now at a great cost in legal fees to the city and potentially a 120 million judgment against the city.
9. Does the city of Carlsbad need to be concerned about similar lawsuits in the event of the passage of any of the three competing initiatives? If so what could be done to lesson the exposure.

Farrah Douglas

10. Please give us a lesson on the meaning of taking. Under what circumstances does the City have the right to take a property?
11. How will the approval of any of these initiatives affect the value of these particular parcels as well as the value of the other undeveloped lands in Carlsbad?
12. Assuming that one of these initiatives will get the majority of the votes, what legal problems do we have to face to implement them?
13. Will these initiatives set the stage and the precedent for similar initiatives in the future? Can someone else start an initiative to change the zoning of Mr. Bovenzi's land, or Mr. Goldstein's properties, to agriculture?
14. There are a lot of assertions regarding the viability of agriculture in this area, is there any legal way to find out if the Coastal Commissioner will allow this land to become strictly agricultural?
15. If there are lawsuits and court actions on the winning initiative, how long, approximately, would it take to actually see something happening on these parcels?
16. During this time can the owners develop or sell the properties?
17. If the city has a legal lease on a part of this land, will the approval of "Save the Strawberries..." negate that lease?
18. To what extend the private property rights will be violated if any of these initiatives is approved?
19. Can the owners of the properties sue for their rights and their investments?